

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. 2013-479

13 **JENNIFER DAWN WAY**
14 **aka JENNIFER DAWN ROWE**

STATEMENT OF ISSUES

15 **Registered Nurse License Applicant**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about May 11, 2012, the Board of Registered Nursing, Department of
23 Consumer Affairs received a second application for a Registered Nurse License from Jennifer
24 Dawn Way, also known as Jennifer Dawn Rowe (Respondent). On or about April 7, 2012,
25 Jennifer Dawn Way certified under penalty of perjury to the truthfulness of all statements,
26 answers, and representations in the application. The Board denied the application on August 8,
27 2012.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made.

6 7. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria to evaluate
8 the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section 480; or

10 (b) Considering suspension or revocation of a license under Section 490.

11 Each board shall take into account all competent evidence of rehabilitation
12 furnished by the applicant or licensee.

13 8. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or to
16 suspend or revoke a license or otherwise take disciplinary action against a person who
17 holds a license, upon the ground that the applicant or the licensee has been convicted
18 of a crime substantially related to the qualifications, functions, and duties of the
19 licensee in question, the record of conviction of the crime shall be conclusive
20 evidence of the fact that the conviction occurred, but only of that fact, and the board
21 may inquire into the circumstances surrounding the commission of the crime in order
22 to fix the degree of discipline or to determine if the conviction is substantially related
23 to the qualifications, functions, and duties of the licensee in question.

24 As used in this section, "license" includes "certificate," "permit," "authority,"
25 and "registration."

26 9. Section 2761 of the Code states:

27 The board may take disciplinary action against a certified or licensed nurse or
28 deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the
following:

....

(f) Conviction of a felony or of any offense substantially related to the
qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

....

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10. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft; dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(April 18, 2011 Criminal Conviction for Petty Theft on June 17, 2011)**

3 13. Respondent's application is subject to denial under sections 480, subdivisions (a)(1)
4 and (a)(3)(A), and 2761, subdivision (f) of the Code in that she was convicted of a crime that is
5 substantially related to the qualifications, duties, and functions of a registered nurse. The
6 circumstances are as follows:

7 a. On or about April 18, 2011, in a criminal proceeding entitled *People of the*
8 *State of California v. Jennifer Dawn Way, aka Jennifer Dawn Rowe*, in San Diego County
9 Superior Court, case number M128452, Respondent was convicted on her plea of guilty to
10 violating Penal Code section 484, petty theft, a misdemeanor. The court dismissed the original
11 count of grand theft (Pen. Code, § 487(a)) pursuant to the plea agreement.

12 b. As a result of the conviction, Respondent was granted summary probation
13 for three years, and ordered to complete shoplifting course, pay \$525 in fines, fees, and
14 restitution, and comply with her probation terms. Respondent was also ordered to stay away from
15 the victim.

16 c. The facts and circumstances that led to the conviction are that on or about
17 the afternoon of April 8, 2011, a loss prevention supervisor at a San Diego Kohl's department
18 store observed Respondent place store merchandise into a large Kohl's shopping bag.
19 Respondent was intercepted outside of the store by loss prevention agents after she left without
20 paying for the merchandise. The total value of the stolen items was \$1,206.78. Respondent was
21 arrested by the San Diego Police Department. Respondent told the officer that she decided to
22 steal children's clothes because she did not have any money to purchase them.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Dishonest Acts)**

25 14. Respondent's application is subject to denial under sections 480, subdivision (a)(2) of
26 the Code in that on or about April 8, 2011, Respondent committed acts of involving dishonesty
27 and deceit, with the intent to substantially benefit herself, as detailed in paragraph 13, above.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

- 4 1. Denying the application of Jennifer Dawn Way for a Registered Nurse License;
5 2. Taking such other and further action as deemed necessary and proper.
6

7
8 DATED: December 11, 2012 Louise R. Bailey
9 LOUISE R. BAILEY, M.ED., RN
10 Executive Officer
11 Board of Registered Nursing
12 Department of Consumer Affairs
13 State of California
14 Complainant
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